

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re WYTHE BERRY FEE OWNER, LLC

WYTHE BERRY FEE OWNER, LLC,
Plaintiff(s),

v.

WYTHE BERRY LLC, YOEL GOLDMAN,
AND ZELIG WEISS,
Defendant(s).

23-CV-9358 (DEH)

ORDER

DALE E. HO, United States District Judge:

Appellant filed this appeal on October 24, 2023. As explained by the Court at ECF Nos. 3, 6, and 7, Rule 8018 of the Federal Rules of Bankruptcy Procedures (“FRBP”) provides that Appellant has 30 days after the docketing of notice that the record has been transmitted or is available electronically to file its opening brief. The notice of record in this case was filed on November 21, 2023. Accordingly, Appellant was required to file its opening brief by December 21, 2023. Appellant provided no timely submission. On January 4, 2024, the Court extended Appellant’s deadline to January 8, 2024, warning Appellant for a second time that failure to prosecute its case would result in dismissal. *See* ECF No. 6. That date passed, and Appellant filed neither an opening brief nor a letter explaining its delay. On January 9, the Court warned Appellant that unless it filed a submission by January 12, 2024, this case would be dismissed. ECF No. 7. Appellant’s submission is now once again overdue.

Rule 41(b) of the Federal Rules of Civil Procedure provides that a district court may dismiss an action if “the plaintiff fails to prosecute or otherwise comply with [the] rules or a

court order.” Fed. R. Civ. P. 41(b); *see also Baptiste v. Sommers*, 768 F.3d 212, 216 (2d Cir. 2014). Under Rule 41(b), a district court may dismiss an action *sua sponte* for failure to prosecute after notifying the plaintiff. *LeSane v. Hall’s Sec. Analyst, Inc.*, 239 F.3d 206, 209 (2d Cir. 2001). Because the Court has not received any response from Appellant, including any indication that Appellant intends to pursue this case, the instant action is dismissed without prejudice, pursuant to Federal Rule of Civil Procedure 41(b).

The Clerk of Court is respectfully directed to terminate all pending motions and close the case.

SO ORDERED.

Dated: January 16, 2024
New York, New York

A handwritten signature in black ink, appearing to read "Dale Ho", is written above a horizontal line.

DALE E. HO
United States District Judge